THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.25051 of 1996
Date: 22nd day of November,2006.

Between:
M.Nagarathnam Naidu

Petitioner

And

1.The Joint Collector, Chittoor District and two others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.25051 OF 1996

ORDER:

1. This writ petition has been instituted questioning the legality and validity of orders dated 15-10-1996 by the Joint Collector, Chittoor. The writ petitioner appears to have purchased Ac.1.32 cents of land situate in Survey No.17/3 of Baippagaripalle Village, Palamaner Mandal, in Chittoor District from the respondent No.3. He has acquired the land through a registered sale deed dated 16-6-1971. The writ petitioner asserts that the sale consideration of Rs.700/- paid by him to the 3rd respondent was a fair and reasonable market value of the land at the relevant point of time. This land of an extent of Ac.1.32 cents situate in Survey No.17/3 of Baipppagaripalle Village, was assigned in favour of the said respondent No.3 somewhere in the year 1956. After having sold off the land in favour of the writ petitioner, the third respondent seems to have approached the Mandal Revenue Officer, Palamaner seeking the restoration of land in his favour, invoking the provisions contained in the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act,1977 (Act 9 of 77) (henceforth referred to as “the Act”). This Act has been brought into force with effect from 21.01-1977 with a view to prohibit transfer of certain lands which are assigned to landless poor persons in the State. The expression landless poor person has been defined in sub section 3 of Section 2 of the Act in the following manner:

> *“Landless poor person” means a person who owns an extent of land not more than 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land or such other extent of land as has been or may be specified by the Government in this behalf from time to time and who has not other means of livelihood”*

2. Similarly, the expression "transfer" has been defined in sub section 6 of Section 2 of the Act as hereunder:

> *"Transfer" means any sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands, not being a testamentary disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction"*

3. Section 3 of the Act imposes prohibition on transfer of assigned lands. To achieve this objective, a fiction has been incorporated in Section 3 of the Act deeming that no transfer to have been effected and no right or title in such assigned land shall vest in any person acquiring land on such transfer. As per sub section 3 of Section 3, any transfer or acquisition made in contravention of the provisions of sub section (1) or sub section (2) of Section 3 shall be deemed to be null and void. Thus great emphasis has been laid down for prohibiting the transfer of assigned lands, however, as per sub section 5 of Section 3, an exception has been carved out. Sub section 5 of Section 3 reads as hereunder:

> *"Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement."*

4. If the assigned land was purchased by a landless poor person in good faith and for valuable consideration from the original assignee prior to the commencement of the Act and if the purchaser is in possession of such land as on the date of commencement of the Act namely 21st Janunary,1977 such transfers have been saved. The writ petitioner has asserted that he is a bonafide purchaser and that he purchased the land from third respondent for a valuable consideration and that he was in possession of the land purchased by him as on 21-1-1977, the date on which Act 9/77 was brought into force. However, these aspects have not been adverted to by the Joint Collector who passed the impugned order. The plea taken by the Revenue

Administration is that the writ petitioner as of now owns land of extent of Ac.5-07cents other than the disputed Ac.1-32 cents of land purchased by him from the third respondent. Therefore, they have come to the conclusion that the writ petitioner is not eligible for assignment. In fact, in the counter affidavit filed by the Mandal Revenue Officer, it has been pleaded as hereunder:

> *" In reply 4 it is submitted that the Writ Petitioner even though he has purchased the DKT land during the year 1971 i.e. before the introduction of Act 9/77. The writ petitioner obtained Dhasrakasth pattas subsequently for the following A.W.D. lands situated in Baiyappagaripalle village during the year 1988 fraudulently.*

Survey No.	Extent	Classification
14/2	2-40	Dry
19/2	1-79	Dry
86/5	0-85	Dry
87/4	0-03	Dry
	5-07	

5. The writ petitioner is right in his contention that the Joint Collector, Chittoor seems to have got confused with the issue before him. The issue before him was whether the purchase of land of extent of Ac.1.32 cents by the writ petitioner from the third respondent on 14-6-1971 is hit by Section 3 read with Section 4 of Act 9/77 or not. The issue is not whether the writ petitioner is justified in seeking assignment of land in his favour from the Government in the subsequent period. While examining the issue relating to the question as to whether the transfer of land in favour of the writ petitioner by the third respondent is hit by Section 3 and Section 4 of the Act 9 /77 what is liable to be looked into is as to whether the writ petitioner was in possession of land which disentitles him to answer the description of a landless poor person as on 16th June,1971, the date of transfer of land by the third respondent in favour of the writ petitioner. Admittedly the enquiry by the Revenue Administration has not been directed in this direction. On the contrary, it had been centered around the fact as to whether the writ petitioner is a landless poor person at the time of enquiry came to be determined. For one to be disentitled from taking the benefit of sub section 5 of Section 3, the point of

time for determination of his status should relate back to the date on which the transfer of assigned land had taken place. Since there is no finding that as on 16-06-1971 the writ petitioner is not a landless person, he is obviously entitled to clutch at saving the transfer of land that has taken place on 16-6-1971 in his favour from the third respondent from being hit by Sections 3 and 4 of the Act. Since the respondents have failed to address this question and determine the same, in that manner the impugned exercise is liable to be declared as illegal and consequently the impugned order is liable to be set-aside. The material on record discloses that he acquired land of an extent of Ac.5.07 cents after the transfer of the disputed land.

6. However, this order shall not be construed as expressing any opinion as to the entitlement of the writ petitioner to seek assignment of land from the State Government without disclosing faithfully and truthfully the entire extent of land owned by him. If the writ petitioner is not entitled to seek any such assignment, it is altogether a different matter for the Revenue Administration to take recourse to law and cancel any such assignment which has been incorrectly made in favour of the writ petitioner. Both these issues should not have been mixed up in the present impugned exercise and only for that reason, the present impugned order is set-aside and the writ petition is allowed but however without costs.

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NOOTY RAMAMOHANA RAO, J

22-11-2006

Stp